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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION TWO

In re A.V. et al., Persons Coming Under the  
Juvenile Court Law.

SAN MATEO COUNTY HUMAN  
SERVICES AGENCY,

Plaintiff and Respondent,

v.

I.Z. et al.,

Defendants and Appellants.

A155035

(San Mateo County Super. Ct.  
Nos. 17JD0098, 17JD0099)

I.Z. et al.,

Petitioners,

v.

SAN MATEO COUNTY SUPERIOR  
COURT,

Respondent,

SAN MATEO COUNTY HUMAN  
SERVICES AGENCY,

Real Party in Interest.

A155536

(San Mateo County Super. Ct.  
Nos. 17JD0098, 17JD0099)

In this consolidated matter, appellants and petitioners I.Z. (Mother) and Father, parents of five-year-old P.S. and almost one-year-old A.V. appeal in case No. A155035 from the juvenile court's August 7, 2018 order suspending their visitation with both P.S. and A.V. They also seek review by extraordinary writ in case No. A155536, pursuant to

California Rules of Court, rule 8.452, of the juvenile court's order terminating their visitation with A.V., after the court terminated reunification services and set the matter for a permanency planning hearing, pursuant to Welfare and Institutions Code section 366.26.<sup>1</sup> The parents contend the court's August 7, 2018 order suspending their visitation with P.S. and A.V. and its October 10, 2018 order terminating visitation with A.V. were not supported by substantial evidence that visitation was detrimental to the children. We shall (1) affirm the juvenile court's order suspending the parents' visitation with both children in case No. A155035, and (2) deny the parents' petitions for extraordinary writ challenging the termination of their visitation with A.V. in case No. A155536.

### **FACTUAL AND PROCEDURAL BACKGROUND<sup>2</sup>**

On February 8, 2017, the San Mateo County Human Services Agency (Agency) filed original petitions alleging that then three-year-old P.S. and newborn A.V. came within the provisions of section 300, subdivision (b)(1). The first petition specifically alleged as to P.S. that Mother had disclosed to a social worker that she had a lengthy history of substance abuse and that P.S. had been living with the maternal grandmother since 2016, because Mother had no means of providing for his care. In addition, P.S.'s father was now deceased. The second petition specifically alleged as to A.V. that she was born prematurely and had tested positive for methamphetamine at birth. Mother had told the social worker that she had used methamphetamine during her pregnancy with A.V. and that she was afraid of Father reacting violently if he learned about her methamphetamine use. Father denied knowledge of Mother's methamphetamine use. In

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code.

<sup>2</sup> Because the issues raised in this consolidated matter solely involve the juvenile court's August 7, 2018 order suspending of the parents' visitation with P.S. and A.V. and its October 10 order terminating visitation with A.V., in this opinion, we will focus on the evidence that is most relevant to the propriety of those orders.

On December 20, 2018, we granted Mother's unopposed request in case No. A155035 to take judicial notice of the reporter's transcript in case No. A155536.

addition, Mother had not obtained prenatal care and the parents, who were living in their car, had no means of providing care for A.V. to ensure that her needs were met.

In its initial report, filed on February 9, 2017, the Agency recommended that A.V. remain in her parents' care and that P.S. remain in the maternal grandmother's care pending further investigation.

On February 15, 2017, the Agency filed an amended petition, which stated that A.V. had been detained. On February 17, 2017, the court ordered both children detained.

In a jurisdiction/disposition report filed on March 8, 2017, the social worker reported that A.V. was placed in a licensed foster home and P.S. remained in the home of his paternal grandparents. Visitation had "gone well thus far," with the parents interacting appropriately with both children. The social worker believed Mother could benefit from both substance abuse treatment and mental health treatment. Father had said he did not need or want to participate in any services. There were concerns about domestic violence between the parents after Mother came to an interview at the Agency with a black eye. Father had a criminal history that included a prior conviction for domestic violence, and P.S. had said he did not feel safe around Father. Father had been working at a company as a desk clerk for five years, but the parents were still living in their car. The Agency recommended that P.S. and A.V. be declared dependent children in out of home placements and that the parents be offered family reunification services.

At the March 13, 2017 jurisdiction/disposition hearing, the court sustained the allegations in the amended petitions and found that out of home placement was in both children's best interests. The court declared Father to be the presumed Father of A.V. and ordered reunification services and visitation for both parents.

In an interim review report filed on May 11, 2017, the social worker reported that the parents had been participating in supervised visitation twice a week. They had attended all but one scheduled visit and the social worker had "observed warm, attentive parents who are able to attend to both children happily." Mother had been drug testing consistently and had tested positive 10 times for Hydrocodone between late March and early May. Mother explained that she had been prescribed Vicodin due to severe pain

after A.V.'s birth but had not yet provided the social worker with her prescription information. She had participated only minimally in other services, including outpatient drug treatment and individual counseling. Father had drug tested consistently, testing positive for marijuana, which he said he used as pain management for arthritis pursuant to a physician's recommendation. Father was receiving individual counseling through his private insurance, but had only completed one session. The parents did not agree that there was a need for domestic violence services, but Father had apparently reached out to a domestic violence program.

Notwithstanding the parents' presentation during visitation "as motivated and thoughtful parents," the social worker believed "that they both become easily distracted with feelings of being treated unjustly by the Agency and service providers to the point that they are unable to engage in the court-ordered services." The Agency recommended that the court continue the children's dependency.

At the May 16, 2017 interim review hearing, the court told the parents: "Neither one of you is doing what you need to do, and you only have three months left to get your acts together. [¶] If you keep acting like everyone is against you and you are victims, it is going to be really hard for you to reunify." The court continued the matter for a six-month review hearing in September.

In the six-month status review report filed on September 5, 2017, the social worker reported that four-year-old P.S. had been placed in the home of his maternal grandmother since February 9, 2017. He was described as a sweet-natured, healthy boy who was developmentally on track. Seven-month-old A.V. had been placed in a foster/adopt home on July 18, 2017. She was doing well physically and developmentally.

The parents had twice weekly supervised visitation with both children for two hours. Out of 47 visits, the parents had been 15 minutes late approximately 25 percent of the time and 3 visits had been cancelled because the parents were at least 20 minutes late. It was noted, however, that the parents were commuting from San Jose and have had repeated issues with their vehicle. The social worker had discussed the disruption their

being late caused, especially to P.S., and they both said they would attempt to get to visits on time. The parents had canceled only three visits.

During visits, the social worker had “witnessed caring, loving parents who are able to fully engage with both children. The children appear bonded to both parents and are more than comfortable during visits as evidenced by their body language and happy demeanor.” The parents were able to tend to A.V.’s needs and traded off playing with P.S. The social worker “commend[ed] the parents for not only using their visits for fun, but also to instill lessons for [P.S.] and demonstrate positive discipline strategies through time outs and humor.”

As to reunification services, while the parents had made some progress with their case plans, Mother’s drug use continued to be a significant worry. She had thus far shown the ability to maintain sobriety for a month only and the social worker did not believe Father understood the severity of Mother’s substance use and mental health issues. The Agency recommended that the children remain in out of home placements and that reunification services continue.

On November 7, 2017, the social worker filed an addendum report for the six-month contested review hearing in which she reported that Mother had tested positive for amphetamines, methamphetamines, and hydrocodone on October 20. She admitted to using methamphetamine and expressed remorse. The social worker did “not question the parents’ love for their children or their parenting skills,” but noted that “the original safety concerns are still present.” The Agency believed an inpatient treatment program and engagement in domestic violence services were important for Mother and that Father needs to complete a program in which he could explore his own substance issues and gain insight into Mother’s.

At the conclusion of the November 13, 2017 six-month review hearing, the court continued the parents’ reunification services and set the matter for an interim hearing in December.

In an interim review report filed on December 7, 2017, the social worker reported that P.S. had demonstrated issues with attachment and became “extremely emotional and

inconsolable when away from a primary support person.” A.V. had been referred to the Early Start program at the Golden Gate Regional Center for an assessment because she was considered at risk for being born prematurely and testing positive for methamphetamines.

Since Mother’s last relapse in October 2017, she had tested negative for all substances during weekly random tests. The parents had failed to show up or call for their scheduled visit with both children on November 30, which had upset P.S.

The social worker concluded that Mother “has had a running theme of being in consistent communication with service providers without ever regularly attending programming. . . . This level of erratic engagement is confusing to the Agency considering [Mother’s] current sobriety and self-expressed devotion to that sobriety and reunification with her children. [¶] While [Father] is working full-time and participating regularly in domestic violence groups, the [social worker] believes that the Father does not seem to associate with or grasp the Agency identified safety concerns that have inhibited the family [from] regaining custody of their children.” The Agency recommended continuing the previous orders.

On December 11, 2017, the court continued prior orders and confirmed the date of March 6, 2018 for the 12-month review hearing.

In a 12-month status review report filed on February 28, 2018, the social worker reported that the parents had refused to consent to A.V. receiving the Early Start services for which she was eligible as a high risk child. They did not think such services were necessary and expressed the belief that the social worker had falsified the Early Start assessments. Mother had also revoked a disclosure of information waiver she had previously signed regarding a mental health assessment of A.V. The clinician therefore could not share any information about A.V.’s case with the social worker.

Regarding visitation, the parents still had issues with arriving on time, but usually were late by only 15 minutes or less. During visits, the parents always attended to A.V.’s and P.S.’s needs and were interactive with both children. They seemed to co-parent well and to enjoy their time with the children. P.S. had begun to be upset and fearful at the

end of visits, expressing concern that the transport officer would not know how to get him home. The foster mother had told the social worker that staff at A.V.'s daycare had reported concerns about A.V.'s appearance after visits with her parents, describing "her as looking worn out, sickly or bloated." The social worker noted she had not observed any such problems with A.V. when supervising visits. Both children were considered to be adoptable.

Mother had missed 11 of 14 drug tests since the last hearing in December 2017. Of the three tests she had taken, she tested dilute once and negative twice. Staff at Mother's outpatient drug treatment program believed an inpatient program would be appropriate for her, based on her testing history and behavior. Father had missed 5 of 11 tests and had tested positive only for marijuana when he did test. On December 2, Father had been arrested after Mother called police to report that he had threatened her with physical violence and she was afraid of him due to past threats and violence on his part. The parents had been unwilling or unable to speak with the social worker since January 18.

Although the parents had made progress with their case plan services, Mother's drug use and Father's failure to understand the severity of Mother's substance use and mental health needs continued to be significant concerns for the Agency. The social worker believed that "[i]f reunification assessments were based on visitation alone, [she] would feel comfortable allowing the children [to] return to the care of the parents with Family Maintenance services in place." However, "[i]nstead of attempting to commit to substance abuse services for the [Mother], the parents have appeared to instead focus on what case management services they believe have not been done by the Agency and what injustices they have experienced by services providers." The Agency therefore reluctantly recommended termination of family reunification services.

In an interim review report filed on March 16, 2018, the social worker reported that the parents continued their refusal to sign consents for A.V. to receive Early Start services. The social worker had explained that the services were preventative and based solely on A.V.'s premature and drug exposed status, but Mother said she had received

special education services and did not want A.V. “to grow up believing that she was not capable because of the specialized services.”

On April 9, 2018, Mother filed a section 388 petition for modification as to A.V., in which she asked the court to change the prior visitation orders that gave the Agency discretion to delegate supervision of visits to a responsible adult to an order that “Hospital workers (e.g. Doctor, RNs., Clinical Social worker, etc.) may also be deemed as responsible adults that can delegate supervision during scheduled visits.” Mother also stated in the petition that the Agency and foster parents had “projected as neglectful and irresponsible to our daughter’s needs[;] therefore we will not sign any consents allowing [the foster parents and social worker] to coordinate care for our child[.]”

On April 12, 2018, A.V.’s counsel filed a section 388 petition for modification, requesting the court to limit the parents’ authority to consent to medical treatment for A.V. and to vest such authority in the Agency. Counsel believed that this change would be in A.V.’s best interest because “[t]he parents’ actions in refusing to sign HIPAA’s [Health Insurance Portability and Accountability Act] is preventing [A.V.] from getting needed medical care, preventing her foster parents from being able to work with her medical providers, and placing her at risk in the event of an emergency. In addition, the parent[s’] actions in seeking an emergency room visit and transportation by an ambulance, when unnecessary, places [A.V.] at risk of emotional trauma.”

On April 20, 2018, the social worker filed a response to both section 388 petitions, recommending that the court deny Mother’s petition and grant A.V.’s counsel’s petition. Specifically, the social worker stated that in February, Mother had expressed concern about two marks A.V. had sustained on her forehead, one in January and the other in February. Mother’s allegation was evaluated out since there was a reasonable explanation for the marks: A.V. “was a newly mobile child and bumped her head learning to stand and walk.” The allegation was nevertheless cross-reported to child care licensing and the appropriate police department. On March 10, Mother called the Agency’s hotline to request that A.V. be taken to a hospital emergency room based on her “mother’s intuition that something was not right.” The request was denied. Mother



also expressed concerns about the bumps and bruises that were not being investigated. Also in March, Mother revoked HIPAA waivers she had previously signed regarding herself, P.S., and A.V., and failed to sign new ones.

In addition, during an April 2, 2018 visit, the parents had insisted that A.V. be transported by ambulance to a hospital emergency room, despite paramedics' recommendation against it. At the hospital, A.V. was diagnosed with an ear infection. Mother was also contacting A.V.'s medical providers and showed up at medical offices "whenever she wants to without an appointment." One of A.V.'s doctors called the social worker supervisor to report that she and the clinic staff were uncomfortable with the way Mother was speaking to them, making accusations and questioning why the doctor did not diagnose A.V. with failure to thrive. Mother had also requested that A.V. receive a CT scan. The doctor said "she felt the child's needs were being poorly served by Mother's interference." The social worker concluded that the parents "seem[ed] to be completely shutting out all other parties in regards to [A.V.'s] medical care, including changing the child's contact information to their information," which kept the Agency and the foster parents from ensuring her health and well-being.

On April 23, 2018, A.V.'s foster parents filed a request to be declared her de facto parents.

At the April 24, 2018 hearing on the two section 388 petitions and the de facto parent request, Mother testified that she was willing to sign A.V.'s medical treatment agreement, with the qualification that the Agency must follow the requirements, and that she had not signed the HIPAA authorization and consents because she did not like being the person who "got all the information last." At the conclusion of the hearing, the court granted A.V.'s counsel's section 388 petition as to both HIPAA information and educational rights, finding that this was in A.V.'s best interest because Mother had confused medical providers by changing her consents, cancelling medical appointments, and having A.V. transported by ambulance when she saw something that concerned her. In addition, the parents' refusal to consent to Early Start and other services required that educational rights be vested in the Agency. The court also ordered that the parents be

given notice of all appointments. The court then granted the foster parents' request for de facto parent status.

On May 10, 2018, A.V.'s counsel filed a section 388 petition for modification in which she requested that the court terminate visitation between A.V. and the parents on the grounds that the parents' behavior had "become increasingly erratic and concerning" and their "erratic behavior, chronic lateness, argumentativeness with agency staff in front of the children, 'investigation' resulting in an unnecessary ambulance trip and reports of abuse, as well as the odoriferous issues resulting in breathing issues for the minor constitute both a physical and emotional risk to [A.V.'s] well-being." The petition stated that the breathing issues resulted from reports that A.V., who suffered from respiratory issues, returned to daycare "with cigarette smoke and perfume on her clothes, which appears to trigger wheezing and coughing in [A.V.]." The "investigation" issues included Mother's May 4, 2018 videotaping of P.S. during a visit while questioning him about a bump observed on A.V.'s head, regarding which Mother had already made a suspected child abuse report. Agency staff was unable to redirect Mother and both parents began arguing with staff, which caused P.S. to start crying. Additional staff had to intervene and end the visit. Finally, on May 1, Mother had filed a section 388 petition for modification, requesting reversal of the court's prior order limiting the parents' authority to consent to medical treatment and educational decisions with respect to A.V. A.V.'s counsel argued that this caused her "concern that the parents will continue the pattern of alienation and investigation, to the child's detriment."

In an addendum report filed on May 23, 2018, the social worker reported several examples of troubling behavior on the part of the parents, including a threatening text message from Mother to the social worker at 2:14 a.m. on April 27 regarding the social worker's unborn baby, Father arguing with the social worker while holding A.V. in her car seat and ignoring attempts at redirection, Mother coming to the Agency's office and refusing to leave until she received a written answer to the suspected child abuse report she had previously submitted and subsequently calling the police, police visiting the foster parents' home on May 12 after Mother reported seeing scratches all over A.V.'s

forehead during a visit,<sup>[3]</sup> and A.V.'s daycare provider reportedly being told not to answer any calls from the parents' phone number because the parents had been calling various daycares in the area in an attempt to ascertain A.V.'s location. The visitation supervisor had said "she was very concerned for [P.S.'s] emotional well-being. She described [P.S.] walking into a supervised visit with a flat affect because he did not know what to expect with [Mother's] unpredictable behavior. She stated that she believed that [P.S.] often though[t] it was his fault if Mother was upset or that he was in trouble."

The social worker further reported that she was unable to get a full picture of the parents' involvement in services because they had been revoking releases of information from service providers. The Agency supported A.V.'s counsel's section 388 petition to terminate the parents' visits with A.V. and opposed Mother's section 388 petition to reverse the court's order limiting their authority to consent to medical treatment and educational decisions.

At the May 29, 2018 12-month review hearing, the court heard testimony from the social worker. Because the hearing could not be completed that day, the court continued the matter to June 29, and also set the matter for a contested 12-month and 18-month status review hearing on August 29.

In another addendum report filed on June 27, 2018, the social worker reported that a meeting had taken place on June 20 between the social worker, both parents, and A.V.'s medical caregivers to inform the parents that the hospital would no longer be providing information to the parents after the parents had shown up at several medical locations, behaving in a disruptive manner, refusing to leave, and/or threatening a staff member. Mother had also been interfering with A.V.'s medications, giving her prescribed breathing medications during visits even when she was not symptomatic, which was against medical advice.

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<sup>3</sup> The foster mother had told the social worker that she now took a photo of A.V. every morning before visits with the parents to protect herself from further reports of abuse by the parents.

The social worker further reported that Mother continued to leave the visiting room during visits to go to her vehicle and the restroom for long periods of time. During a June 6, 2018 visit, a social worker who was supervising the visit reported that P.S. told Mother “that he was scared of her and said, “ ‘I’m scared you don’t love me if I misbehave.’ ” Mother assured P.S. that she would always love him regardless of what he did. P.S.’s therapist described him as a very happy and outgoing child. He had, however, been diagnosed with “unspecified anxiety disorder.” A.V.’s referral for mental health services had been closed on June 10, due to Mother’s failure to respond to the therapist’s attempts to provide services to A.V. and Mother.

At the continued 12-month status review hearing on June 29, 2018, the social worker testified that since November 2017, the parents had been at least 10 minutes late to over 50 percent of their visits with the children. During visits, one parent would often leave the visiting room for 15 to 30 minutes at a time. The parents were living in their van and could have been going to the restroom to change their clothes and clean up. The social worker was unable to verify whether Mother had made progress with her services, including domestic violence services, substance abuse testing, and a mental health evaluation, because Mother had refused to sign releases of information. As to Father, the social worker had information from the previous social worker that he had completed half of his domestic violence program, but she had been unable to verify any additional progress. She also did not know if he had completed a mental health evaluation due to his refusal to sign a release of information. She had not received any information about Father’s drug testing since April, nor had she been able to verify whether he had completed his outpatient substance abuse program.

At the conclusion of the hearing, the court granted the Agency’s request to order the parents not to attend A.V.’s medical appointments for three weeks, due to their past disruptions at appointments. The court then reaffirmed the August 29, 2018 date for a contested 12- and 18-month hearing.

In the Agency’s 18-month status review report filed on July 6, 2018, the social worker reported that she had met with both parents on July 2. The parents refused to sign

HIPAA waivers, which would allow the social worker to refer them for services, arguing that the waivers violated their personal rights. Mother stated that she had been participating in weekly drug screens, individual therapy, and a domestic violence program, but refused to provide the names of the programs and individuals providing the services. She said they would be subpoenaed for the August hearing. When the social worker asked Father if he was participating in services, Mother interrupted before he could answer. The Agency could not confirm if either parent was actively participating in services.

The parents continued to participate in two weekly two-hour supervised visits with the children. According to the social worker, they “actively engage with the children during the visit” and the “children appear comfortable in their presence.” The social worker concluded that she had “been unable to identify the family’s barriers to services and ha[d] found it increasingly difficult to communicate with the parents since Mother has not began [*sic*] responding to the [social worker] in a threatening manner and Father does not speak for himself, but allows Mother to respond for him. Instead of attempting to commit to substance abuse services for Mother, the parents have appeared to instead focus on what case management services they believe have not been done by the Agency and what injustices they have experienced by service providers.” The Agency recommended termination of reunification services for both parents and agreed with A.V.’s counsel’s request for termination of parental visitation with A.V.

On August 6, 2018, the Agency filed section 388 petitions for modification, requesting that the parents’ visitation with P.S. and A.V. be suspended pending the 18-month review hearing that was scheduled to begin on August 29. The request was based on an incident on July 27, when the parents contacted the San Mateo County Sheriff’s Department during a supervised visit to request a welfare check of A.V. because she had a minor scratch on her nose and two minor scratches on her lower back. The children were present when a deputy arrived to investigate. The matter was also referred to the Pacifica Police Department; officers went to the foster home on the evening of August 2 to investigate and take photographs of A.V. The Agency believed the suspension of

visitation would be in P.S. and A.V.'s best interests "because [they] will not be subjected [to] the parent's ongoing inappropriate behavior."

At the August 7, 2018 hearing on the Agency's petition to suspend visitation with both children pending the August 29 contested status review hearing, the parents' attorneys objected to suspension of visitation, arguing that the court should instead order the parents not to make any calls during visits and to take up any concerns with the supervisor after visits. The court then stated that "[t]his is an extraordinary situation. I am not at all convinced that the parents will follow the court's directions or orders." The court therefore granted the petition to suspend all contact between the parents and the children until the next hearing on August 29.

On August 10, 2018, the parents filed a notice of appeal from the court's August 7 order suspending visitation.

On August 16, 2018, the parents filed a section 388 petition for modification, requesting that the court terminate its August 7 order and reinstate parental visitation. The changed circumstances involved purported evidence of "perjury in its blatant form" by the social worker in her section 388 petition "to obtain this order. This was a maliciously and outright disgusting act of entitlement & revenge for contacting the sheriff's [*sic*]." Apparently, the alleged perjury consisted of the social worker already having planned to terminate the July 27 visit before the sheriff's deputy arrived. The court set the petition to be heard on August 29.

On August 29, 2018, the parents filed a motion to dismiss in propria persona, "upon showing evidence of Perjury by social worker."

At the August 29, 2018 hearing, the court first granted the maternal grandmother's request for de facto parent status as to P.S. The court then reset the entire matter for a hearing on October 10. The court ordered the parents to sign HIPAA waivers, but the parents refused. The court also ordered them to drug test before leaving the courthouse.

On September 17, 2018, the Agency filed another section 388 petition to restrain the parents from stalking A.V. and her foster parents and from making any reports to the Agency's hotline or local police departments regarding A.V.'s welfare. The petition was

based on Father contacting the Pacifica Police Department on September 11, and reporting that A.V. had scratches on her back and face. He requested a welfare check at A.V.'s foster home. He called back and provided the officer with the name and address of A.V.'s daycare and requested that a welfare check be completed there as well. The petition further stated that the only way the parents could know the location of A.V.'s daycare "would be to follow the caregivers from their home to day care. This kind of stalking is contrary to the spirit of the court's order suspending visitation . . . ." The order was in A.V.'s best interest because this ongoing behavior of the parents placed A.V.'s "emotional well-being at risk, as well [as] potentially her placement."

The petition was set for a September 18, 2018 hearing, but on that date, following an off the record discussion, the court found the petition "moot," and stated that counsel should inform the parents that the Agency "is watching them and that if they don't follow previous court orders, the [Agency] will inform the court." The court again confirmed that the hearing on the 12- and 18-month reviews and the three petitions for modification would take place on October 10.

The Agency filed a final addendum report on October 4, 2018, in which the social worker reported that after the court ordered the parents to drug test on August 29, Mother could not provide a sample and after an hour, the court said the Agency personnel could leave and it would be considered a positive test. Father tested positive for marijuana. The social worker then referred Mother to drug test at a counseling center, but Mother never appeared to test. The social worker had also received a progress report from Father's domestic violence program, which stated that he had attended 37 group sessions, had missed 11 sessions, and had 15 more sessions to attend before completing the program. Father participated appropriately in sessions and had recently attended the group consistently. P.S.'s therapist had informed the social worker that Mother had called her to request that she stop providing therapy services to P.S.

In addition, after Father called police on September 11, 2018, officers located A.V. at her daycare. She "was found to be happy and had no visible injuries on her face or on her back." On September 17, the foster mother informed the social worker that a

police officer had arrived at her home at 7:20 p.m. to conduct a welfare check. Apparently, Mother had contacted the Pacifica Police Department an hour earlier, “claiming neglect, abuse, and malnutrition.” The officer checked A.V., her bedroom, and the refrigerator, and had no concerns. Then on October 3, the foster mother informed the social worker that a police detective had contacted her that evening, asking to come to the foster home to conduct a welfare check. He explained that Mother had called him several times and mailed him a number of photographs of A.V.’s injuries.

At the combined 12- and 18-month status review hearing, which took place on October 10, 2018, the only evidence submitted was a series of photographs of A.V., taken by the parents during visits or medical appointments between January 17, 2018 and July 27, 2018, which depicted A.V.’s physical condition at the time. During subsequent argument, Mother’s counsel noted that visitation had been suspended for two months and asked, “because of the lack of visitation, that the court find reasonable services were not given to them and that six more months of reunification services be provided.” Father’s counsel argued that the parents had participated in some services and their refusal to sign HIPAA waivers should not have kept the Agency from re-referring them to services. Counsel also stated that she knew the parents’ “focus should have been their services, but they felt that [A.V.’s] current state of health was more important to them than their services . . . .”

The court then addressed both the pending section 388 petitions and whether to terminate reunification services, stating that the parents “should have done services. [¶] . . . . [¶] This turned into a power struggle some time back. And . . . it became a standoff. [¶] That’s not what dependency court is about. It’s not about power. It’s about doing services so families can be reunited. [¶] This family is irreparably disunited at this point.”

The court then denied Mother’s August 16, 2018 section 388 petition to reinstate visitation and her May 1 section 388 petition to reverse the court’s order limiting the parents’ authority to consent to medical treatment and educational decisions as to A.V. The court also granted A.V.’s counsel’s May 10 section 388 petition to terminate the



parents' visitation with A.V. The court, however, authorized parental visitation with P.S., as well as visits between the two children. The court terminated both parents' reunification services as to P.S. and A.V., and set the matter for a section 366.26 hearing.

On October 11, 2018, each parent filed a notice of intent to file writ petition.<sup>4</sup>

## DISCUSSION

The parents contend the juvenile court's August 7, 2018 order suspending their visitation with P.S. and A.V. and its October 10, 2018 order terminating their visitation with A.V. were not supported by substantial evidence that visitation was detrimental to the children.<sup>5</sup> (See *In re A.J.* (2015) 239 Cal.App.4th 154, 160.)<sup>6</sup>

### ***I. Suspension of Visitation with Both P.S. and A.V.***

During reunification efforts, "[v]isitation shall be as frequent as possible, consistent with the well-being of the child." (§ 362.1, subd. (a)(1)(A).) However, "[n]o visitation order shall jeopardize the safety of the child." (§ 362.1, subd. (a)(1)(B).) "In addition to requiring a court to deny visitation if the child's safety is at risk, the plain language of section 362.1, subdivision (a) only requires visitation as frequently as the well-being of the child allows. Accordingly, if visitation is not consistent with the well-being of the child, the juvenile court has the discretion to deny such contact. As courts

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<sup>4</sup> Both parents have filed petitions for extraordinary writ, seeking review of the juvenile court's orders and requesting a stay of the section 366.26 hearing pending determination of this petition. On November 29, 2018, we stayed the section 366.26 hearing, then scheduled for December 27, pending further order of this court.

<sup>5</sup> Because the parents do not otherwise argue that reasonable reunification services were not provided, we will only address the visitation-related claims.

<sup>6</sup> The parents acknowledge that some appellate courts have also reviewed a detriment finding under an abuse of discretion or blended standard of review. (See *In re T.M.* (2016) 4 Cal.App.5th 1214, 1219 (*T.M.*) ["Although this discrepancy has been acknowledged [citation], it is unclear 'whether the two standards are so different in this context' [citation]"].) Because our conclusion in this case would be the same under any of these standards, we will utilize the substantial evidence standard suggested by the parents.

have explained, “well-being” includes the minor’s emotional and physical health. [Citations.]” (*T.M.*, *supra*, 4 Cal.App.5th at p. 1219; accord, *In re Matthew C.* (2017) 9 Cal.App.5th 1090, 1102.)<sup>7</sup>

In the present case, on August 7, 2018, the juvenile court granted the Agency’s section 388 petition to suspend the parents’ visitation with both children pending the 18-month review hearing scheduled for August 29, which was subsequently continued to October 10. At the hearing on the petition, the parents’ attorneys argued that, instead of suspending visitation, the court should order the parents not to make any calls during visits and to take up any concerns with the visit supervisor after visits. The court disagreed, finding that “[t]his is an extraordinary situation. I am not at all convinced that the parents will follow the court’s directions and orders.”

At the time the court suspended visitation, the evidence showed that although the parents continued to engage in a loving way with the children during visits, they also engaged in other increasingly problematic behavior. For example, during an April 2, 2018 visit, after noting that A.V. was coughing and under the weather, the parents called for an ambulance and insisted that A.V. be taken to the hospital for tests. She was then transported by ambulance to a hospital emergency room against the paramedics’ recommendation, where she was diagnosed with a fever and ear infection and was prescribed antibiotics. At another visit on April 30, Father began arguing with the social worker while holding A.V. in her car seat and ignored attempts at redirection. During a visit on May 4, 2018, Mother videotaped P.S. while questioning him about a bump the parents had previously observed on A.V.’s head, regarding which they had already made a suspected child abuse report and contacted A.V.’s pediatrician. Agency staff was

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<sup>7</sup> The *T.M.* court noted “there is a split of authority over whether section 362.1 authorizes the denial of visitation only on a finding of a threat to the minor’s physical safety (*In re C.C.* [(2009)] 172 Cal.App.4th [1481,] 1491-1492), or whether courts may also deny visitation based on potential harm to the minor’s emotional well-being [citation].” (*T.M.*, *supra*, 4 Cal.App.5th at p. 1219.) We agree with *T.M.* and the numerous other cases that have concluded that “well-being” includes the physical *and* emotional health of the minor. (*Ibid.*, citing cases.)

unable to redirect Mother and both parents began arguing with staff, which caused P.S. to cry.<sup>8</sup> Additional staff had to intervene and end the visit.

The parents also repeatedly informed the Agency and called the authorities about suspected child abuse of A.V., based on alleged injuries they observed during visits. For example, in January and February 2018, Mother reported that she was concerned about marks she had observed on A.V.'s head. In March, those allegations of physical abuse were evaluated out. Mother thereafter called the police about the bumps she had observed on A.V.'s head. Police officers also visited the foster parents' home on May 12, after Mother reported seeing scratches all over A.V.'s forehead during a visit. During a July 27 visit, the parents contacted the San Mateo County Sheriff's Department to request a welfare check of A.V. based on a minor scratch on her nose and two minor scratches on her lower back. The children were present when a deputy arrived to investigate. The parents also contacted the local police department about the scratches and officers went to the foster parents' home to investigate and take photographs of A.V. on the evening of August 2.

This evidence reflects the unfortunate fact that, instead of focusing on needed services that would allow them to reunify with the children, the parents became increasingly preoccupied with proving that the foster parents were abusing A.V. and that the Agency was failing to act, based on minor injuries they observed during visits. The visits thus fueled the parents' inappropriate, intrusive, and destructive conduct, which the court reasonably found jeopardized the children's well-being. (See *T.M.*, *supra*, 4 Cal.App.5th at p. 1219.)

The parents argue that their inappropriate "behavior could easily be ameliorated with conditions in place during visits," such as ordering the parents not to bring their phones to visits and not calling outside agencies during visits, as well as "more closely

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<sup>8</sup> P.S. had been diagnosed with an anxiety disorder. The supervising social worker had stated in May 2018, that she was concerned about P.S.'s emotional well-being because he came into supervised visits "with a flat affect because he did not know what to expect with [Mother's] unpredictable behavior."

supervised visit[s]” and other “protections” that “could be put in place to prevent any potential risks.” Given the parents’ escalating and antagonistic behavior towards the Agency, medical providers, and the foster parents, which occurred both during and outside of visits, the court appropriately rejected this suggestion after finding that, in this “extraordinary situation,” it was “not at all convinced that the parents [would] follow the court’s directions and orders.”<sup>9</sup>

We conclude the record contains substantial evidence demonstrating that at the time the court temporarily suspended visitation pending the 18-month status review hearing, visitation was not consistent with the emotional well-being of P.S. and A.V. (See § 362.1, subds. (a)(1)(A) & (a)(1)(B); *T.M.*, *supra*, 4 Cal.App.5th at p. 1219.)

## **II. Termination of Visitation with A.V.**

“After the termination of reunification services, the parents’ interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point ‘the focus shifts to the needs of the child for permanency and stability[.]’ [Citation.]” (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Nonetheless, even after reunification services have been terminated, visitation must continue unless the court finds it would be detrimental to the child. (§ 366.21, subd. (h); *In re David D.* (1994) 28 Cal.App.4th 941, 954.)

In the present case, at the conclusion of the October 10, 2018 combined 12- and 18-month status review hearing, the court found that, instead of participating in services, the parents had turned the case into a “power struggle” and a “standoff.” In addition to terminating the parents’ reunification services and setting the matter for a section 366.26

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<sup>9</sup> Because we believe visitation was properly suspended based on the evidence described in the text, *ante*, we need not address whether the parents’ late arrival to many visits and A.V. smelling of smoke and perfume after visits could have been ameliorated through additional orders or closer supervision.

hearing, the court granted A.V.'s counsel's section 388 petition and terminated the parents' visitation with A.V.<sup>10</sup>

By the time the court terminated the parents' visitation with A.V., in addition to the evidence leading to suspension of visitation with both children on August 7, 2018, as already discussed in part I., *ante*, the record reflects that on September 11, Father called police to report that A.V. had scratches on her face and back and to request a welfare check at A.V.'s foster home and daycare.<sup>11</sup> Officers located A.V. at her daycare, where she "was found to be happy and had no visible injuries on her face or on her back." In addition, on September 17, the foster mother informed the social worker that a police officer had come to the home that evening to conduct a welfare check, apparently based on Mother calling the police department "claiming neglect, abuse, and malnutrition." The investigating officer left after finding nothing of concern. On the evening of October 3, the foster mother told the social worker that a police detective had contacted her and asked to come to the home to conduct a welfare check. The officer explained that Mother had called him several times and mailed him photographs of A.V.'s injuries.

This evidence demonstrates the parents' unrelenting efforts to investigate the alleged abuse of A.V., based on minor injuries they had observed before visitation was suspended. Indeed, their desire to undermine and blame the foster parents and the Agency continued unabated during the two months before the 18-month review hearing. The court reasonably believed that to permit visitation with A.V. in these circumstances would be harmful to the child. Indeed, it would only further fuel the parents' preoccupation with uncovering negligence and abuse, risking further scenes during visits

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<sup>10</sup> The court *did* order visitation between the parents and P.S., as well as between P.S. and A.V.

<sup>11</sup> This phone call was the basis of another section 388 petition filed by the Agency, which stated that the only way the parents could have known the location of the daycare was from following the foster parents from their home to the daycare. The Agency requested that the parents be ordered to stop stalking A.V. and her foster parents; the court later found the petition moot.

and escalation of the parents' attempts to win their power struggle with the Agency and the foster parents, in which A.V. had become a pawn. Such continuing conduct would also jeopardize the stability—and potentially the permanency—of A.V.'s placement. (See *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.)

We conclude substantial evidence supports the court's finding at the 18-month status review hearing—at which it terminated the parents' reunification services and set the matter for a section 366.26 hearing—that continued visitation would be detrimental to A.V. (See § 366.21, subd. (h).)

### **DISPOSITION**

In case No. A155035, the juvenile court's orders are affirmed. In case No. A155536, the petitions for extraordinary writ are denied on the merits. Our stay of the section 366.26 hearing is dissolved. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

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Kline, P.J.

We concur:

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Stewart, J.

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Stewart, J.

A155035 & A155536